# **ORIGINAL**



1 BEFORE THE ARIZONA CORPORATION COMMISSION 2 **COMMISSIONERS** 3 JEFF HATCH-MILLER, Chairman WILLIAM A. MUNDELL 4 MARC SPITZER MIKE GLEASON 5 KRISTIN K. MAYES 6 In the matter of: **DOCKET NO. S-03550A-04-0000** 7 ARTHUR B. COOPER CRD #1856331 RESPONSE TO RESPONDENTS' NOTICE 8 8025 E. Redwing OF BANKRUPTCY FILING AND Scottsdale, Arizona 85250 MOTION TO CONTINUE HEARING 9 LINDA EBINGER-COOPER 10 CRD # 1353173 8025 E. Redwing 11 Scottsdale, Arizona 85250 12 Respondents. 13 The Securities Division ("Division") of the Arizona Corporation Commission objects to 14 Respondents Notice Of Bankruptcy Filing And Motion To Continue Hearing and hereby requests 15 that the Motion to Continue be denied. 16 For the reasons set forth in the following Memorandum of Points and Authorities the 17 Respondents' Motion to Continue Hearing should be denied. 18 19 Respectfully submitted this 31 day of October, 2005. 20 21 Wendy Coy 22 Attorney for the Securities Division of the Arizona Corporation Commission 23 Arizona Corporation Commission DOCKETED OCT 8 1 2005

**DOCKETED BY** 

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### MEMORANDUM OF POINTS AND AUTHORITIES

#### I. **INTRODUCTION**

The Division filed this Notice of Opportunity For Hearing on December 15, 2004. Respondents requested a hearing on December 29, 2005 and filed an Answer on February 3, This matter was set for hearing beginning on May 17, 2005. The Division and Respondents stipulated to a continuance and this matter was set for Hearing on June 29, 2005. The Hearing was then set for June 30, 2005. Upon stipulation, the Hearing was then set for October 11, 2005. Upon motion by the Division, this matter was then set for Hearing on November 1, 2005.

The Respondents filed for protection under Chapter 13 of the United States Bankruptcy Code on October 16, 2005. On October 20, 2005, Respondents' attorney notified the Division of the Respondents' Bankruptcy filing and stating their intent to continue this matter due to the lack of Bankruptcy Court approval to represent the Respondents. See attached Exhibit A. On October 21, 2005, the Division notified Respondents' attorney it understood that if an application was filed in the Bankruptcy proceeding approval would generally be granted within a short period of time, therefore the Hearing could proceed. See attached Exhibit B. To date, no application has been filed by Respondents' attorney seeking approval by the Bankruptcy Court. Then, on October 28, 2005, Respondents filed this Motion to Continue Hearing.

#### II. **ARGUMENT**

### The Arizona Corporation Commission is enforcing its police and regulatory powers and therefore are not stayed by 11 U.S.C. §362(b)(4).

The Cooper's counsel has suggested that this matter is stayed by the automatic stay. "As a threshold issue, it is clear that the court in which the litigation claimed to be stayed is pending has jurisdiction to determine whether the proceeding is subject to the automatic stay." S.E.C. v. Bilzerian, 131 F. Supp. 2d 10, 14 (D.D.C. 2001.) Thus this tribunal is the proper forum to determine whether the stay applies to this action.

Generally the filing of a bankruptcy petition stays administrative litigation. The filing of a bankruptcy petition operates as a stay, applicable to all entities, of "the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against a debtor . . . ." 11 U.S.C. § 362(a)(1). The general policy behind the automatic stay is to grant complete and immediate, albeit temporary relief to the debtor from creditors, and to prevent dissipation of the debtor's assets before orderly distribution to all creditors can be affected. *S.E.C. v. Brennan*, 230 F.3d 65, 70 (2<sup>nd</sup> Cir. 2000)

However, Section 362(b) establishes several exceptions to the automatic stay. Section 362(b)(4) provides the automatic stay does not apply to:

. . . the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit's . . . police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's . . . police or regulatory power.

11 U.S.C. § 362(b)(4).

Section 362(b)(4) permits the government to initiate or continue an action under its police or regulatory powers without the restrictions of the automatic stay. *In Re Universal Life Church, Inc.*, 128 F.3d 1294, 1297 (9<sup>th</sup> Cir. 1997); 3 Collier on Bankruptcy § 362.05[5][b], at 362-58 (15th ed. 1996). The purpose of this exception is to prevent a debtor from "frustrating necessary governmental functions by seeking refuge in bankruptcy court." *S.E.C. v. Brennan*, 230 F.2d at 71. To prevent bankruptcy from becoming "a haven for wrongdoers," the automatic stay should not prevent governmental regulatory, police and criminal actions from proceeding. *In Re Universal Life Church, Inc.*, 128 F.3d at 1297; 3 Collier on Bankruptcy § 362.05[5][a], at 362-54 (15th ed. 1996).

The legislative history of § 362(b)(4) indicates that when a governmental unit brings a legal action against a debtor in order "to prevent or stop violation of fraud, environmental protection, consumer protection, safety, or similar police or regulatory laws, or attempting to fix damages for violation of such a law, the action or proceeding is not stayed under the automatic stay." S.Rep.

No. 95-989 at 52 (1977), reprinted in 1978 U.S.C.C.A.N. 5787, 5838; H.R.Rep. No. 95-595 at 343 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6299; *In Re Universal Life Church, Inc.*, 128 F.3d at 1298; the exception in § 362(b)(4) applies whenever a governmental unit is exercising a valid and traditional police or regulatory power. *In re PMI-DVM Real Estate Holdings, L.L.P.*, 240 B.R. 24, 30 (Bkrtcy.D.Ariz. 1999).

There can be no question that the Securities Division is exercising a valid and traditional police or regulatory power. The intent and purpose of the Securities Act of Arizona is to protect the public, to preserve fair and equitable business practices, to suppress fraudulent or deceptive practices in the sale or purchase of securities and to prosecute persons engaged in fraudulent or deceptive practices in the sale or purchase of securities. *See* Laws 1951, Ch. 18, § 20. Indeed, the United States District Court for the District of Arizona has already determine that investigations by the Commission regarding possible violations of the Securities Act of Arizona are not stayed as such actions of the Commission are an exercise of its police and regulatory power. *In re Knoell*, 160 Bankr. Rep. 825, 826 (D. Ariz. 1993).

In this case the Securities Division alleged Respondents were engaged in acts that violated the Arizona Securities Act. The Securities Division has exercised valid and traditional police and regulatory powers in its actions against the Coopers. The automatic stay does not apply to this case.

# B. Due to the Police Power/Regulatory Exception, This Court May Enter All Appropriate Orders.

The Securities Division seeks an Order to Cease and Desist, to stop Respondents from future violations of the Securities Act of Arizona. The Securities Division also seeks revocation of Respondent Linda Cooper's securities registration and penalties and restitution from both Respondents for their violations of the Securities Act of Arizona.

In the case of *In re Poule*, a registered contractor argued that revocation of his license and the civil fines imposed on him by the Registrar of Contractors of the State California violated the automatic stay in § 362(a)(1). *In re Poule*, 91 B.R. 83, 85 (9th Cir. BAP 1988). The court held

that when a state agency imposes civil penalties on a debtor for fraudulent conduct or when the state agency is attempting to prevent future fraudulent conduct through injunctive relief, the action comes within the scope of § 362(b)(4) and thus the automatic stay does not apply. *In re Poule*, 91 B.R. at 87 (emphasis added).

Once a court determines that a proceeding is excepted from the automatic stay by Section 362(b)(4), the court can allow the governmental unit to fix the amount of penalties, up to and including entry of a money judgment. S.E.C. v. Brennan, 230 F.3d 65, 71-2 (2<sup>nd</sup> Cir. 2000).

# C. The Respondents made no effort to obtain the Bankruptcy Court's approval to proceed with this matter in a timely manner.

On October 16, 2005, the Respondents filed for protection under Chapter 13 of the United States Bankruptcy Code. This matter has been set for Hearing on a number of different occasions over the last year. Neither Respondents nor the Respondents' attorney have made any attempt to obtain approval from the Bankruptcy Court so that this matter may proceed in a timely manner. The Respondents are attempting to delay this proceeding by the use of the Bankruptcy Court and the protections it affords honest Debtors.

### III. CONCLUSION

Respondents' Motion to Continue should be denied. Respondents had knowledge of this matter and the ability to obtained necessary approvals from the Bankruptcy Court in sufficient time to proceed with this matter. Respondents should not benefit from their manipulation of the system.

RESPECTFULLY SUBMITTED this 31 day of October, 2005.

Wendy Coy

Attorney for the Securities Division of the

Arizona Corporation Commission

1	ORIGINAL AND THIRTEEN (13) COPIES of the foregoing
2	filed this <u>3/s†</u> day of October, 2005, with
3	Docket Control Arizona Corporation Commission
4	1200 West Washington Phoenix, AZ 85007
5	COPY of the foregoing hand-delivered this
6	alst day of October, 2005, to:
7	ALJ Marc Stern Arizona Corporation Commission/Hearing Division 1200 West Washington
8	Phoenix, AZ 85007
9	COPY of the foregoing mailed This 31st day of October, 2005, to:
10	
11	Mark D. Chester CHESTER & SHEIN, P.C. 8777 N. Gainey Center Drive, Suite 191
12	Scottsdale, Arizona 85258 Attorney for Defendants
13	By: Veronia Saloral
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- 1	1

**EXHIBIT A** 



### FAX TRANSMITTAL MEMO

TO:

Wendy Coy, Esq.

FAX NO: (602) 594-7418

FIRM:

SECURITIES DIVISION

FROM:

Mark D. Chester, Esq.

DATE:

October 20, 2005

RE:

Cooper: Securities Division

**MESSAGE** 

PAGES TRANSMITTED (INCLUDING THIS PAGE): 6

GAINEY RANCH CORPORATE CENTER
8777 NORTH GAINEY CENTER DRIVE, SUITE 191
SCOTTSDALE, ARIZONA 85258-2106
PHONE: (480) 922-3933 ◆ FAX: (480) 922-3969
mchester@cslawyers.com



October 20, 2005

### Via Facsimile

Wendy Coy, Esq. ARIZONA CORPORATION COMMISSION SECURITIES DIVISION 1300 West Washington, Third Floor Phoenix, Arizona 85007-2996

Cooper: Securities Division
Docket No. S-03550-04-0000

Dear Wendy:

As we discussed, respondents Arthur Cooper and Linda Cooper have filed a voluntary petition with the bankruptcy court. Attached for your reference are copies of the petition and the *Declaration Re: Electronic Filing*.

As you surmised, I will be filing a motion to continue the hearing as I do not believe that I will be permitted to proceed as their counsel without bankruptcy court approval. Similarly, there are other issues which need to be resolved before proceeding with this matter.

As far as the hearing, based on your interpretation of the law we will be moving forward at some juncture. In that regard, please forward copies to my office at your convenience of any statements (under oath) as well as documents that the Division obtained from the witnesses in this matter. This is especially crucial for the two witnesses that the Division has requested appear telephonically. However, please do not limit production to only those two witnesses.

Finally, I anticipate forwarding a settlement proposal in light of the recent events. The proposal will be sent by separate cover letter.

Very truly yours,

Mark D. Chester

MDC/lmd Attachments (Official Form 1) (12/03)

FORM B1 United States Bankruptcy Court District of Arizona					Voluntary Petition		
Name of Debtor (if individual, enter Cooper, Arthur Bryan	Last, First, l	√iddle):		Name of I Coop	loint Debto er, Linda	r (Spouse) (Last A.	, Fi <del>nst</del> , Middle):
All Other Names used by the Debtor in the last 6 years (include married, maiden, and trade names):				All Other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade names):			
Last four digits of Soc. Sec. No. / Cos (if more than one, state att):	nplete EIN or	other Tax I.D.	No.	Last four ( (if more than	ligits of So	·	nplete EIN or other Tax I.D. No.
Street Address of Debtor (No. & Street E. Redwing Scottsdale, AZ 85250	et, City, State	& Zip Code):		3	iress of Joji E. Redwin sdale, AZ	ng	Street, City, State & Zip Code):
County of Residence or of the Principal Place of Business:	ricopa				Residence Place of Bu		copa
Mailing Address of Debtor (if difference E. Redwing Scottsdale, AZ 85250	ent from street	t address):			ddress of J E. Redwin sdale, AZ	ng	different from street address):
Location of Principal Assets of Busic (if different from street address above							
Information Regarding the Debtor (Check the Applicable Boxes)  Venue (Check any applicable box)  Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.  There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.							
Type of Debtor (Checo Individual(s) Corporation Partnership Other	☐ Rail ☐ Stoo ☐ Con			Chap	the oter 7 oter 9	Petition is File  Cha	
Nature of Debts (Check one box)  Consumer/Non-Business  Chapter 11 Small Business (Check all boxes that apply)  Debtor is a small business as defined in 11 U.S.C. § 101  Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional)			ŀ	Filing Fee (Check one box)  Full Filing Fee attached  Filing Fee to be paid in installments (Applicable to individuals only.)  Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments.  Rule 1006(b). See Official Form No. 3.			
Statistical/Administrative Information (Estimates only)  Debtor estimates that funds will be available for distribution to unsecured creditors.  Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.							
Estimated Number of Creditors	145	60-99	100-199	200-999	1000-over		
Estimated Assets \$0 to \$50,001 to \$100,001 to \$50,000 \$100,000 \$600,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,0 \$50 millio		0,000,001 ta 00 millian	More than \$100 million	
Estimated Debts  \$0 to \$50,001 to \$1,00,001 to \$50,000  \$50,000 \$100,000 \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,0 \$50 millio		0,000,001 to 00 million	More than \$100 million	

(Official Form 1) (12/03)				
Voluntary Petition	Name of Debtor(s):	FORM B1, Page 2		
(This page must be completed and filed in every case)	Cooper, Arthur Bryan			
·	Cooper, Linda A.			
Prior Bankruptcy Case Filed Within Last 6	Years (If more than one, attach addit	ional sheet)		
Location	Case Number:	Date Filed:		
Where Filed: - None -				
Pending Bankruptcy Case Filed by any Spouse, Partner, or	Affiliate of this Debtor (If more than	one, attach additional sheet)		
Name of Debtor:	Case Number:	Date Filed:		
- None -		<u> </u>		
District:	Relationship:	Judge:		
Sign	atures			
Signature(s) of Debtor(s) (Individual/Joint)	Ex	hibit A		
I declare under penalty of perjury that the information provided in this	(To be completed if debtor is require	ed to file periodic reports (e.g., forms		
petition is true and correct.		id Exchange Commission pursuant to		
[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed	Section 13 or 15(d) of the Securities requesting relief under chapter 11)	Exchange Act of 1934 and is		
under chapter 7, 11, 12, or 13 of title 11, United States Code, understand	Exhibit A is attached and made	le a tratt of this netition		
the relief available under each such chapter, and choose to proceed under		hibit B		
chapter 7. I request relief in accordance with the chapter of title 11, United States	(To be completed i	f debtor is an individual		
Code, specified in this petition	whose debts are pri	marily consumer debts)		
	I, the attorney for the petitioner name	ed in the foregoing petition, declare		
X /h// 2 / lo_	that I have informed the petitioner to chapter 7, 11, 12, or 13 of title 11, U	nat the or snet may proceed under		
Signature of Deptor Arthur Byvan Cooper	explained the relief available under	cach such chapter.		
x Amat Cooper	x			
Signature of Joint Debtor Linda A. Gooper	Signature of Attorney for Debte	π(s) Date		
argupune of some Debio. Linda A. Cooper	Lawrence D. Hirsch 004982			
Telephone Number (If not represented by attorney)	Ex	hibit C		
reveluence (it not telicenter of ground)	Does the debtor own or have posses	ssion of any property that poses		
	a threat of imminent and identifiable safety?	e name to public health or		
Date		d and made a part of this petition.		
Signature of Attorney	■ No			
X	Simple A	D. A. C. D.		
Signature of Attorney for Debtor(s)		torney Petition Preparer		
Lawrence D. Hirsch 004982	§ 110, that I prepared this documen	tion preparer as defined in 11 U.S.C.		
Printed Name of Attorney for Debtor(s)	provided the debtor with a copy of	this document.		
Hirsch Law Office, P.C.	<b>)</b> .			
Firm Name	Printed Name of Bankruptcy Po	etition Preparer		
5020 East Shea Boulevard		•		
Suite 150 Scottsdale, AZ 85254	Social Security Number (Requi	red by 11 U.S.C. § 110(c).)		
Address	, and the same of			
(480) 505-9696 Fax; (480) 505-9707				
Telephone Number	Address			
·	Yadiese			
Date		ubers of all other individuals who		
Characterist of Database (Characterist (Database Atlanta	prepared or assisted in preparin	g this document:		
Signature of Debtor (Corporation/Partnership) I declare under penalty of perjury that the information provided in this	1			
petition is true and correct, and that I have been authorized to file this	1			
petition on behalf of the debtor.	75			
The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.	If more than one person prepar	ed this document, attach additional prists official form for each person.		
	- ''	учене вичечен токих ток свей резвой.		
Signature of Authorized Individual	X Signature of Bankruptcy Petitic			
Signature of Authorized Individual	Signature of Bankruptcy Petitic	on Preparer		
	77-4-			
Printed Name of Authorized Individual	Date			
	A bankruptcy petition preparer			
Title of Authorized Individual	provisions of fitte 11 and the F	ederal Rules of Bankruptcy		
	Procedure may result in fines of			
Date	U.S.C. § 110; 18 U.S.C. § 156.			

Form B 21 Official Form 21 (12/03)

### FORM 21. STATEMENT OF SOCIAL SECURITY NUMBER

### United States Bankruptcy Court District of Arizona

Arthur Bryan Cooper		
In re Linda A. Cooper		
Debtor		
	Case No.	
E. Redwing		
Address Scottsdale, AZ 85250	Chapter	13
Employer's Tax Identification (EIN) No(s). [if any]:		
Last four digits of Social Security No(s): xxx-xx xxx-xx		
STATEMENT OF SOCIAL SECURITY NUMBER(	S)	
1. Name of Debtor (enter Last, First, Middle): Cooper, Arthur, Bryan		
(Check the appropriate box and, if applicable, provide the regulred information.)		
/ X /Debtor has a Social Security Number and it is:		
(If more than one, state all.)		
/ Dobbar dans not have a Conicl Committee Number		
/ Debtor does not have a Social Security Number.		
2. Name of Joint Debtor (enter Last, First, Middle): <u>Cooper. Linda. A.</u> (Check the appropriate box and, if applicable, provide the required information.)		
/ X /Joint Debtor has a Social Security Number and it is: (If more than one, state all.)		
/ /Joint Debtor does not have a Social Security Number.		•
I declare under penalty of perjury that the foregoing is true and correct.		
x Lellas Cey Our Zoo	<u> </u>	
Arthur Bryan Cooper Date		<del></del>
Signshure of Debtor		
x X mala A ( organ		
/Linda A. Cooper / Date		<del></del>
Signature of Joint Debtor		•
<del>-</del>		

		UNITED STATES BAN	NKRUPTCY COURT	
		DISTRICT OF	F ARIZONA	
In re	Arthur Bryan Cooper Linda A. Cooper Debtor(s)		BANKRUPTCY CASE NO.	
	DE	) ECLARATION RE: E	LECTRONIC FILING	
PART	I - DECLARATION OF PETITIC	ONER:		
partner security foregoi electror DECL no eve schedu	ship member, hereby declare under pen- y numbers, provided in the completed p- ing completed documents and my attorn mically filing the completed petition, land ARATION RE: ELECTRONIC FILIN nt, no later than 20 days after the date to	alty of perjury that the info petition, lists, statements and they has provided me with a lists, statements and schedu NG is to be filed with the Cle the petition was filed or, in	is A. Cooper , the undersigned debtor(s), corporate or comation I have given my attorney and the information, including schedules is true and correct. I have reviewed and signed can signed copy of each to retain for my records. I consent to my ules with the United States Bankruptcy Court. I understand erk after all schedules and statements have been filed electronical the event an extension has been granted, no later than 5 days and original of this DECLARATION will cause my case to be	ing socia sch of the y attorno- that thi lly but, its after the
ргоссс		United States Code, underst	ner debts and has chosen to file under chapter 7] I am aware that the relief available under each such chapter, and choose to the petition.	
DAT	111-1	(If joint case, both s	Linda A. Cooper  Joint Debtor  spouses must sign)	
	· Authorized	Corporate Officer or Partner	rship Member	
PAR'	I II - DECLARATION OF ATTOR	RNEY:		
debtor	(s) a copy of all forms and information to	o be filed with the United St individual, I have informed	before I submit the petition, schedules and statements. I will tates Bankruptcy Court and have complied with all other require the petitioner that [he or she] may proceed under chapter 7, 11, ler each such chapter.	ements ir
DAT	ED:	<del></del>		
		502 Sui Sc	wrence D. Hirsch 004982 Attorney for Debtor(s) 20 East Shea Boulevard site 150 cottsdale, AZ 85254 80) 505-9696 Fax:(480) 505-9707	
	(FILE OR	Exhil LIGINAL WITH COURT. D	ibit I DO NOT FILE ELECTRONICALLY)	

EXHIBIT B

COMMISSIONERS
MARC SPITZER - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

ARIZONA CORPORATION COMMISSION

MATTHEW J. NEUBERT DIRECTOR

SECURITIES DIVISION
1300 West Washington, Third Floor
Phoenix, AZ 85007-2996
TELEPHONE: (602) 542-4242
FAX: (602) 594-7470
SecuritiesDiv@azcc.gov

BRIAN C. McNEIL EXECUTIVE DIRECTOR

**Fax Cover Sheet** 

# of pages (including Cover Sheet) 03

Date Sent Friday, October 21, 2005 11:29:46 AM

то:	Mark Chester
PHONE: FAX:	480-922-3969
FROM:	
PHONE: FAX:	
NOTES:	

### \*\*\*WARNING\*\*\*

THE INFORMATION TRANSMITTED BY THIS FACSIMILE IS CONSIDERED CONFIDENTIAL AND IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER TO THE INTENDED RECIPIENT, YOU SHOULD BE AWARE THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE,

COMMISSIONERS

JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

BRIAN C. MCNEIL EXECUTIVE DIRECTOR



#### MATTHEW J. NEUBERT DIRECTOR

SECURITIES DIVISION
1300 West Washington, Third Floor
Phoenix, AZ. 85007
TELEPHONE: (802) 842-4242
FAX: (802) 894-7470
E-MAIL: securities/div@azoc.gov

#### ARIZONA CORPORATION COMMISSION

October 21, 2005

Mark D. Chester, Esq. CHESTER & SHEIN, P.C. 8777 N. Gainey Center Drive, Suite 191 Scottsdale, Arizona 85258

Re: Arthur and Linda Cooper

Dear Mark:

Thank you for your letter dated October 20, 2005. As your letter indicates, a Motion to Continue the November 1, 2005 hearing will be filed shortly. The basis cited for the continuance is that you, as the Coopers' securities attorney, are not approved by the Bankruptcy Court to continue representation post bankruptcy.

It is my understanding that the Bankruptcy Court will, in a short period of time (generally within a week), approve an application by an attorney to provide services to the debtor pending any objections. Has such an application been filed with the Bankruptcy Court regarding your appointment? If so, then there is still plenty of time for the approval to be obtained from the Court and the hearing may proceed without delay.

On or about June 16, 2005, the Securities Division provided you copies of the exhibits it plans to utilize during the upcoming hearing and provided a list of witnesses it plans to call at the hearing. The Securities Division did receive a notebook with documents that the Respondents apparently plan to utilize however, no list of witnesses has been provided. The Securities Division received no requests for any type of discovery until seven business days before the scheduled hearing.

Although it is not the policy of the Securities Division to release the examination under oath transcripts to respondents unless the transcript will be utilized during the hearing, in this case we will provide you with the transcripts of Mr. Cooper, Mrs. Cooper and Mr. Amstutz. Please note that there were no other examinations under oath in this matter. Those documents received from listed witnesses that will be utilized during the hearing have been provided in the exhibit book.

October 21, 2005 Page 2 of 2

You indicated in your correspondence that a settlement proposal will be provided to the Securities Division. Please note that the Securities Division provided you a draft consent on this matter June 13, 2005 and received no comments from you on the proposed consent.

If you have any questions or comments, please contact me. I may be reached at 602/542-0633.

Sincerely,

Wendy Coy